

The Ohio Sundry Claims Board

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In the Constitution of the State of Ohio is the following provision:

Suits may be brought against the state, in such courts and in such manner, as may be provided by law.¹

Although this provision has been in the above form since 1912, and a counterpart was in the constitution of 1802, the general assembly has never seen fit to enact legislation carrying the constitutional permission into effect. Parenthetically it may be noticed that the courts of Ohio have held that the constitutional provision which would allow suits and actions against the state is not self-executing but requires enabling or permissive legislation.² Instead of permissive legislation allowing actions against the state, The Eighty-Second General Assembly in 1917 created the Sundry Claims Board. This act is now Ohio General Code Section 270-6.³ The original act established essentially the same jurisdiction as is now exercised by the Board. The Board, as then established, consisted, as now, of the Budget Commissioner, the Auditor of State, the Attorney General, the chairman of the Senate Finance Committee and the chairman of the Finance Committee of the House of Representatives. It was empowered to receive "original papers representing claims against the State of Ohio for the payment of which no monies have been appropriated."⁴ The Board was authorized to investigate claims and approve or disapprove them, with or without conditions and limitations, and make its report to the chairman of the House Finance Committee of the next ensuing general assembly, presumably for action by the general assembly, although that fact is not stated.⁵ However, another statute requires the State Director of Finance to include all claims allowed by the Sundry Claims Board in the state budget estimates.⁶

In 1919 the legislature amended Section 270-6 by giving to the Board, through its president, the authority to administer oaths, to

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¹ OHIO CONST. ART. I, §16.

² *Raudabaugh v. State*, 96 Ohio St. 513 118 N.E. 102 (1917); *Palumbo v. Industrial Commission*, 140 Ohio St. 54, 42 N.E. 2d 766 (1942).

³ OHIO GEN. CODE §270-6 (1946) was enacted in 1917 as House Bill No. 32.

⁴ OHIO GEN. CODE §270-6 paragraph 1 (1946).

⁵ *Id.*

⁶ OHIO GEN. CODE §154-36 (1946).

compel the attendance of witnesses and the production of evidence and the authority to punish failure to comply with that authority.⁷ This amendment gave to the House and Senate members of the Board, in addition to their necessary expenses, a per diem allowance for performance of the duties incidental to membership on the Board.

Section 270-6 remained in that form until 1945, when the Ninety-Sixth General Assembly amended the section to allow the Board to make immediate payment of claims of two hundred dollars or less without the necessity of waiting for direct legislative action in each such claim.⁸ This amendment undoubtedly resulted from a recognition of the injustice involved in making the claimant wait the usual lengthy period before legislative approval. It has been said that the hardship caused by delay attendant upon securing legislative approval is just as great to the person who has a claim greater in amount than two hundred dollars.

The present form of the statute after the above changes is as follows:

There is hereby created a board to be known as the 'sundry claims board' to consist of the superintendent of budget who shall be president, the auditor of state who shall be secretary, the attorney general, the chairman of the senate finance committee, and the chairman of the finance committee of the house of representatives. In addition to any other duties that may by law devolve upon such board, it is hereby authorized and empowered to receive original papers representing claims against the state of Ohio for the payment of which no monies have been appropriated. Such claims shall be filed and properly designated either by number or short title or both. All such claims shall be carefully investigated by such board. The president of the sundry claims board shall, for the purposes contemplated by this section, have power to administer oaths, compel the attendance of witnesses, and the production of books and papers, and to punish for disobedience of subpoena, refusal to be sworn, or to answer as a witness, or to produce books and papers, as is conferred upon officers authorized to take depositions. After such investigation the board shall either approve, approve with conditions and limitations or disapprove of each such claim, and append to the original papers heretofore mentioned representing each claim, a concise statement of facts brought out in such investigation upon which its approval or disapproval is based. Such original papers and appended statements shall be filed in the office of the president of such board,⁹ and delivered to

⁷ The amendment was adopted by the Eighty-Third General Assembly by the enactment in 1919 of Amended Senate Bill No. 114.

⁸ House Bill 51, 96 Ohio General Assembly (1945).

⁹ These original papers and appended statements are now filed in the office of the Department of Finance. OHIO GEN. CODE §154-36 (1946). [Footnote by the author.]

the chairman of the finance committee of the house of representatives of the next general assembly promptly upon the appointment of such chairman. A copy of the above-mentioned appended statement shall be kept on file in the office of the president of such board and, together with the original papers representing such claim and any other matters pertaining thereto, shall constitute a permanent claims' record.

When any claim filed with it has been approved by the sundry claims board in an amount of \$200 or less, the auditor of state upon being presented with a voucher for the payment thereof, signed by the president and secretary of the sundry claims board, shall, if money has been duly appropriated for the payment thereof, issue thereon his warrant drawn on the treasurer of state in the amount set out in such voucher.

A per diem of ten dollars for each day actually spent by the chairman of the finance committee of the senate and house respectively, while in the performance of the duties herein enumerated, and upon the summons of the president of the board, together with their necessary expenses, shall be paid from the funds appropriated for the expense of legislative committees upon vouchers approved by the president and secretary of the board herein created; provided, however, that the provisions of this act (G.C. §270-6) shall not be construed to conflict with section 15 of the General Code.

In the thirty-one years that Section 270-6 has been in existence it appears that the statute was only once the subject of judicial interpretation. In that case the court said, in the principal point involved, that the appropriation bill embodying sundry claims must, to be valid, receive the vote of two-thirds of the members elected to the legislature under the Ohio Constitution,¹⁰ which requires that no money "shall be paid on any claims which shall not have been provided for by pre-existing law, unless such compensation, or claim, be allowed by two-thirds of the members elected to each house of the General Assembly."¹¹ It is perhaps strange also that Section 270-6 has been the subject of no important administrative interpretations which define its scope of operation or delineate its authority, although the statute has been the subject of several Attorney General's opinions on minor questions not of interest here.

As the statute indicates, the Board is composed of the Superintendent of the Budget, the modern term for the earlier Budget Commissioner, the Attorney General, the Auditor of State, the Chairman of the House Finance Committee and the Chairman of the Senate Finance Committee. The Assistant Auditor of State and the First Assistant Attorney General participate in the Board's work in place of their principals, the Auditor of State and the Attorney General.

¹⁰ OHIO CONST. ART. II, §29.

¹¹ *State ex rel. Krieg v. Tracy*, 47 Ohio App. 65, 190 N.E. 48 (1934).

It would seem that no discussion of the terms of the statute is required. The absence of litigation involving interpretation of the statute over the long period of its existence would indicate that it is sufficiently detailed and clear in its meaning.

With the above introduction and preface it becomes pertinent to discuss the method of operation of the Board. The applicant who seeks redress through Board action, who has no counsel in perhaps fifty per cent of the cases, is furnished with detailed instructions as to procedure before the Board. The form of the instructions is as follows:

All Claims and correspondence should be addressed to the *SUNDRY CLAIMS BOARD, STATE HOUSE, COLUMBUS, OHIO.*

Owing to the many various types of claims, set forms for filing are not advisable and are not required by the Board.

The Board requires that the submitted claims be drawn in affidavit form, and signed by the claimant. If the claimant is a firm or corporation the affidavit should be signed by the proper officer of the firm or corporation, and should contain the following information:

1. A complete history of the origin of the claim, giving locations, names, addresses and dates involved.

2. Wherein the claim is one resulting from an accident, give exact location, time, identity of persons and equipment involved, together with the names and addresses of eye witnesses; also a description of the property damage, and if personal injuries are claimed, statements of attending physicians, concerning the same, and *state why you consider the State of Ohio responsible.*

3. Claims for damages to real estate, such as those said to have been caused by floods, highway operations and grade changes, should contain exact locations, dates of happenings, and if possible, photographs showing basis for damages claimed.

4. Claims for refunds, unpaid bills, reimbursements and payments for services, should carry a statement setting forth the reasons the accounts were not paid in the proper and regular manner.

5. All claims should specify the amounts claimed for damages and an itemized statement supporting such amounts. Wherein damages have been corrected, copies of paid or unpaid bills should be enclosed, and wherein the correction of the damage is estimated, a signed statement by the estimator should be furnished.

6. Claims arising out of contracts with the State should contain the contract number, and such other references to plans, specifications and records, as would make complete investigation possible.

7. Statements of witnesses and others in support of claims *must* be sworn and signed, and bear the notary seal.

Claimants who desire to be present at the hearing of

their claim, should so advise this office, in order that we may notify them of the scheduled time.¹²

When the applicant's claim is received by the Board president it is immediately sent to the department or division of state government which is involved. That department is requested to investigate the claim and give the Board all the facts which are known. The comments of the department or opinions of the department are neither requested nor desired by the Board. If the nature of the claim demands, or the facts warrant such action, the claim, upon its return from the department, is handed to the Board's own investigator, who is a lawyer experienced in insurance type investigations, for further investigation objective in nature, and to obtain any information desired but not obtained from the claimant's statement or the department's report. After completion of the above procedure the claim is scheduled for hearing. Often applicants are content to submit their claims upon the written statements and do not appear in person before the Board. If the claimant appears before the Board he is privileged to produce his testimony directly by his statement and those of his witnesses. More often, however, the claimant rests his claim upon his sworn statement and those of his witnesses, if any, which have previously been furnished the Board, plus his own oral elaboration of his claim and that of his counsel if he is represented. The hearing before the Board is informal. It usually evolves into a discussion of the claim by the Board members, the claimant and his counsel, and the representative of the state department if one is present. After completion of the hearing further investigation is sometimes made by the Board's investigator, and often further statements are filed by the claimant, such as reports of doctors and statements appearing desirable either to the Board or to the claimant as a result of the hearing. The Board attempts to dispose of all claims filed prior to the convening of the regular session of the general assembly and hears claims until close to the time of the adjournment of the regular session. At that time the claims allowed, classified as to type, are assembled in bill form, each case carrying a short statement of the claim. The bill is handed, as required by statute,¹³ to the Chairman of the House Finance Committee. It is introduced in the closing days of the regular session of the general assembly and, when passed by the required two-thirds of members elected,¹⁴ becomes a law. After the lapse of the ninety-day referendum period required by the constitution,¹⁵ the claims are paid.

¹² Instructions are furnished upon application to Department of Finance. [Footnote by the author.]

¹³ OHIO GEN. CODE §270-6 (1946).

¹⁴ See note 11 *supra*.

¹⁵ OHIO CONST. ART. II, §1(c).

A word should be said about the rule the Board applied to determine liability. It is now, and it is believed always has been, the position of the Board members that it is their duty to grant relief in those cases where, if the state were suable, a good cause of action, or in other words a recoverable case, could be presented in court. Stated differently, if the case at hand is one that would allow recovery as between private litigants, the Board accepts jurisdiction and recommends payment. The Board does not accept jurisdiction of, or recommend payment of, what some claimants and some lawyers persist in presenting as moral claims. The Board members act only when a case is presented that is soundly bottomed upon facts and law which would allow recovery in an action or suit in a court of law or equity. The claim which is based only on a sympathetic appeal or which is presented only because there is no hope of recovery elsewhere stands no chance of approval by the Board.

Although there is no statute of limitations to define the period during which a claim must be filed, the Board takes some notice of the time of filing of the claim in relation to the time when it might have been filed. If the claim is very old and no reason appears why it could not have been filed seasonably, the Board usually requires some explanation of the delay. If the Board has any rule or policy as to the time of filing claims, it is that the Board is guided by the comparable statute of limitations that would apply to a given claim if it were the subject of litigation between individuals.

There is no provision in the law for a judicial review of the action of the Sundry Claims Board. Why there is none, or whether there should be one, pose questions which invite only speculation. It is certain, though, that if there were an appeal from the Board to the common pleas court and to the court of appeals and supreme court, the ultimate decision of the courts would amount to no more than a recommendation that the general assembly pay, or refuse to pay, the claim involved. It is perhaps for this reason that there is no appeal from the Sundry Claims Board, and perhaps also for this reason there should be no appeal from that agency.

It appears that the Ohio method of handling claims against the state is not unique. The greater part of the states appear to require claims against the state to be passed upon by an administrative officer or board with legislative action needed to complete payment of the claim. In some states, however, an administrative officer is given the authority to hear and pay certain specified and restricted claims against the state. In only four states has a court of claims, with full authority to hear and pay claims against the state, been established.

It is difficult to illustrate the work of the Sundry Claims Board by showing what is done in a typical year because there is no typical

year. The claims vary tremendously by years both in number, type, and amount. In addition the work of the Board falls naturally into the two-year period or biennium, that is, the term of the general assembly, and for some reason the greater part of the claims are not filed or do not come up for action until the second year of the biennium. As to the division between claims of two hundred dollars or less, and those greater, 1947 will serve to illustrate. In that year a total of 262 claims were filed; 96 were for more than two hundred dollars and 166 were for two hundred dollars or less.¹⁶ Of the 96 claims for more than two hundred dollars, 84 claims amounting to \$257,193.42 were allowed. Of that number 27 were claims involving in some manner damage to property and totaling \$18,578.62. Eight personal injury claims amounting to \$20,080.00 were approved. Fourteen contractual claims aggregating \$170,239.01 were paid. Parenthetically, it may be noticed that the greater part of such contract claims arose in some manner out of highway construction contracts. Six unpaid bills of the state totaling \$7,173.04 were paid. Eight of the claims were for payment for services and amounted to \$7,755.68. Twenty-one claims representing reimbursements and refunds totaling \$33,367.07 were paid.¹⁷

Criticism would not come with good grace from a person participating in Board action. However, these facts, not meant as criticism, may be noticed.

The Board members all have other and principal occupations.¹⁸ Their Board duties must be performed in time not claimed by their principal occupation. The persons making up the Board of Sundry Claims also are members of the State Emergency Board and the State Controlling Board. Duties attaching to those positions require considerable time. Therefore, the Board is necessarily somewhat hampered in its effort to hear all cases within the time available to it. Again, persons filing a claim in excess of two hundred dollars in January of a year of a regular session of the general assembly, of necessity must wait a minimum of two years until their claims are paid.

It is interesting to observe that more than one attempt has been made to do away with the present system of making claims against the state and substituting either authorization for suit against the state or a special judicial tribunal to hear such claims. As early as 1933, after long investigation by the State Bar Association, a bill was

¹⁶ In other words, 63.36% of the claims filed in 1947 were for two hundred dollars or less. For other statistics see House Bill No. 497, The Sundry Claims Act of the 97th General Assembly (1947).

¹⁷ The above figures all relate to claims in excess of two hundred dollars.

¹⁸ The personnel of the Board at present includes two lawyers, a salesman, a businessman, and a manufacturer.

introduced in the general assembly which would have allowed limited redress against the state in the courts. It was House Bill No. 434 of the Nintietth General Assembly which would have permitted suits against the state for negligence of employees and agents of the State Highway Department. The bill passed the House and was reported favorably by the Senate Committee handling it but was lost in the rush of the last day of the legislative session.

Again, in the activity which preceded the adoption of the present State Administrative Procedure Act,¹⁹ it was at one time seriously proposed that a tribunal having state-wide jurisdiction be established to hear appeals from all state administrative bodies and to consider claims against the state. At present the Ohio State Bar Association has a committee considering the advisability of proposing an Ohio Tort Claims Act. A report of this committee was published in 1948.²⁰ After reviewing the present situation and mentioning the present status of the Sundry Claims Board the report stated as follows:

Your committee believes that the time has come to remedy this situation.

It is not possible to say what proposals the bar committee will advance because the committee's work has not yet come to the point where it may make recommendations. It appears that the committee has considered: suits to be allowed in court in certain limited and specified cases, a judicial review of the determination of the Board, and a statute of limitations for claims or at least the giving of notice of intention to file a claim within a specified time.

If a summarized recommendation may be made to lawyers who are to appear before the Sundry Claims Board, it would be this: file claims promptly in order to assure an early hearing; state all the facts, whether in the applicant's statement or witnesses' statements, concisely and fully; and most important, include a statement showing the basis of the claimed liability of the state.

¹⁹ OHIO GEN. CODE §154-61 *et seq.* (1946).

²⁰ OHIO BAR, May 3, 1948, p. 76.